

BY CERTIFIED R.R.R AND REGULAR MAIL



Office of the Vice Chancellor
for Labor Relations

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Dr. Joseph Wilson
215 West 91st Street
New York, New York 10024

Peter Zwiebach, Esq.
Director, Legal Affairs
Professional Staff Congress/CUNY
61 Broadway, Suite 1500
New York, New York 10006

Dear Dr. Wilson and Mr. Zwiebach:

In accordance with Section 21.6 of the Agreement between The City University of New York and the Professional Staff Congress/CUNY, I transmit the decision of the Chancellor's Designee in the disciplinary proceeding of **Brooklyn College v. Joseph Wilson**.

Please note that Section 21.7 provides:

The penalty recommended by the Chancellor's Designee shall be implemented after fourteen (14) days, unless within fourteen (14) calendar days of the receipt of the decision of the Chancellor's Designee the employee elects to appeal by proceeding to disciplinary arbitration in accordance with Section 21.8.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Silverblatt", written over a horizontal line.

Pamela S. Silverblatt
Vice Chancellor for Labor Relations
Designee of the Chancellor

PSS:MR:nl
Enclosures

c: Michael T. Hewitt, Esq.



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DISCIPLINARY HEARING

BROOKLYN COLLEGE v. JOSEPH WILSON

I. BACKGROUND

In accordance with section 21.6 of the applicable Collective Bargaining Agreement between The City University of New York and the Professional Staff Congress/CUNY (“the Agreement” and “the PSC”), a hearing was held on April 10, May 8, September 19, October 17, and December 11, 2013, and January 15, March 18, April 29, May 22, June 23, August 18 and 22, 2014, regarding charges of incompetent or inefficient service, neglect of duty, and/or conduct unbecoming a member of the staff, brought by the President of Brooklyn College (“the College”) against Joseph Wilson (“the Respondent”), a tenured Professor in the Department of Political Science (“the Department”) at the College.¹ As set forth in the charges, the Respondent also served as the Director of the Graduate Center for Worker Education of Brooklyn College (“GCWE”); the Co-Director of the “Black Male Initiative” (“BMI”)² – also known at the College as “ERIS” – an acronym for Empowerment, Recruitment, Investment, and Support; and the Director of the Center for Diversity.

The hearing followed a written Notice of Intent to Prefer Charges served on the Respondent by the President on or about December 12, 2012, setting forth the proposed charges and the proposed penalty of termination of employment. A meeting among the Respondent; Peter Zwiebach, Esq., PSC Director, Legal Affairs, representing the Respondent; Michael Hewitt, Esq., the College’s Assistant Vice President for Human Resources Services and Labor Designee; and Joan Waters, Esq., then-Associate General Counsel, CUNY Office of the General Counsel & Senior Vice Chancellor for Legal Affairs,³ was held on December 19, 2012, to discuss the Notice of Intent to Prefer Charges, the proposed charges, the proposed penalty, and the basis of the charges. The College served the Respondent with a Notice of Disciplinary Charges by letter dated January 3, 2013.

The Respondent is charged with: unjustly enriching himself from College-related funds (Charge I, Specifications 1-3); submitting incomplete, false, and misleading Multiple Position Report forms, and failing to submit required Multiple Position Report forms (Charge II); entering into

¹ The College first hired the Respondent as an Assistant Professor in the Department of Political Science effective September 1, 1986. He received tenure in that title effective September 1, 1991, and was promoted to Associate Professor effective January 1, 1992, and to full Professor effective January 1, 1994.

² BMI is a CUNY-wide program designed to increase, encourage, and support the inclusion and educational success of underrepresented groups in higher education, particularly black males.

³ Ms. Waters resigned from her position at CUNY effective March 27, 2014.

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unauthorized agreements with outside entities for the use of the GCWE's space at 25 Broadway⁴ (Charge III); creating, without authorization, academic or quasi-academic programs; negotiating, without authorization, with outside entities to create programs; and conducting programs that were either unauthorized or falsely marketed (Charge IV, Specifications 1-4); submitting false, duplicate and/or misleading paperwork for foreign trips to Egypt, Greece, Brazil, Venezuela, and Cuba, resulting in his unjust enrichment (Charges V-VIII); manipulating the administration of grants issued to an outside entity housed at the Taft Institute at Queens College,⁵ causing money to be paid to the Taft Institute rather than Brooklyn College, paying himself grant administration fees, and failing to report his involvement with the Taft Institute on his Multiple Position Report form (Charge XII); arranging unauthorized payments to two administrative members of the GCWE in excess of their established salary scales (Charge XIII); improperly appropriating grant funds provided by the New York State Office of Children and Family Services ("OCFS") (Charge XIV); and obtaining reimbursement from various CUNY-related funding sources for personal purchases, including purchases made at the boarding school and college attended by his daughter, as well as a television set and electronic equipment (Charge XVI).⁶ A copy of the January 3, 2013 charges is attached.

Marc Ragovin, Esq., representing the Chancellor's Designee, convened the hearing, which was attended on all dates by the Respondent and Mr. Zwiebach. Ms. Waters represented the College on April 10, May 8, September 19, October 17, and December 11, 2013, and on January 15, and March 18, 2014; Rachel Nash, Esq., Associate General Counsel, CUNY Office of the General Counsel & Senior Vice Chancellor for Legal Affairs, represented the College after Ms. Waters' resignation, and attended on March 18, April 29, May 22, June 23, and August 18 and 22, 2014. Pamela Pollack, the College's Counsel to the President, attended all of the sessions except those on August 18 and 22, 2014. Mr. Hewitt also attended all of the sessions except those on December 11, 2013, and January 15, 2014. Alan Gilbert, the College's Associate Vice President for Budget and Planning/Chief Financial Officer; Jacqueline Galang, the Director of the College's Office of Fiscal and Business Affairs; Avril Chase, the Assistant Director of the College's Office of Internal Audit and Property Management; Kenneth Norz, the University Academic Affairs Manager in the Department of the Executive Vice Chancellor and University

⁴ The GCWE has been located at 25 Broadway in Manhattan for approximately the past ten years -- it had previously been located at 99 Hudson Street -- in floor space that is rented by the University out of tax levy funds, and that is divided between The City College of The City University of New York and the College. The Respondent served as the Program Director of the GCWE from July 1, 1996, until February 2012.

⁵ Per the Queens College website, the Taft Institute "is a nonpartisan, not-for-profit 501(c)3 enterprise dedicated to promoting informed citizen participation in the United States and around the world. In 1996 the Taft Institute chose Queens College of the City University of New York as the site of its national headquarters."

⁶ The College withdrew Charge I, Specification 3; Charge IV, Specifications 2 and 4; and Charges IX, X, XI, and XV. These charges, accordingly, are not addressed herein.

Provost; Mr. Hewitt; Dr. Louise Hainline, a Professor in the Department of Psychology at the College; Dr. Maria Ann Conelli, the Dean of the College's School of Visual, Media & Performing Arts; James Eaton, the College's Director of Academic Administration; Dr. Terrence Cheng, the College's Associate Provost; and Ms. Pollack testified on behalf of the College.⁷ Dr. Sally Bermanzohn, the former Chair of the Department and a Professor Emerita of the College; George Cunningham, a Professor in the Department of Africana Studies; Steven Leberstein, a former Professor at The City College of The City University of New York; Lisa DeStefano, an IT Systems Associate Level 2, with the functional title of Director of Financial Reporting in the College's Office of Financial Reporting and Reconciliation; and Elliott Dawes, the Director of the CUNY BMI, testified on behalf of the Respondent.

II. SUMMARY OF THE HEARING

In its opening, the College asserted that the Respondent's "almost staggering" number of violations and improper practices constitutes a "colossal" breach of the trust that the College had placed in him. The College maintained that the evidence would show that the Respondent had enriched himself while depriving the students of scarce resources. The College stated further that each of the Respondent's transgressions, standing alone, would be sufficient to warrant termination; combined, there is no question that termination of the Respondent's employment is the appropriate penalty.

The College also explained⁸ that pursuant to the University's Statement of Policy on Multiple Positions ("MPP") (Coll. Ex. 107(b), pp. 2-3), the faculty is given full-time annual paid employment to cover all the activities of teaching, research, consulting, curriculum development, counseling, committee work, etc. Consequently, faculty members are generally not permitted to receive extra compensation for work done during the academic year for CUNY. *Id.* Rather, to the extent a faculty member is given a significant administrative assignment for CUNY, he/she may receive reassigned time that reduces the number of teaching hours he/she must complete in

⁷ The College's principal witness on April 10, May 8, September 19, October 17, and December 11, 2013, and on January 15, 2014, had been Kimberly Phillips, its former Dean of Humanities and Social Sciences. Dean Phillips served in this role from August 2011, until her resignation from the College effective June 25, 2013, to accept a position at Mills College in Oakland, California. Although Dean Phillips had agreed to continue her testimony via teleconference following her relocation, and had completed her direct examination and was undergoing cross examination as of the close of the January 15, 2014 hearing session, it became apparent after January 15, 2014, that due to the demands on her schedule at Mills College, Dean Phillips would be unavailable to participate any further in the proceeding. The parties therefore agreed that her testimony would be stricken, with the exception that exhibits identified by Dean Phillips that had been admitted into evidence would not have to be reintroduced through other witnesses.

⁸ This summary was actually included in the College's closing statement but is set forth herein, given its relevance to the charges.

a particular semester or academic year. Faculty at the College must achieve a 21 teaching contact hour workload per year (see Appendix A, Workload Settlement Agreement, to the PSC/CUNY collective bargaining agreement.) The teaching load may be reduced by the number of hours of reassigned time a faculty member receives for other work done at CUNY, such as serving as a director of an institute.

In addition, reassigned time may also be available for faculty members who are awarded external grants for research or another academic program or project. As a result, grant applications generally include the cost of that reassigned time and the cost of hiring an adjunct professor to teach the courses that have been reassigned. Thus, the grant reimburses the College for money it must spend as a result of the faculty member's reassignment, but does not pay extra compensation to the grant recipient (*i.e.*, the faculty member).

In special circumstances, a College President may authorize additional compensation for a special, short-term non-teaching assignment;⁹ both the hours and the amount of extra compensation, however, are strictly limited by the MPP. The additional non-teaching work may not exceed 150 hours per semester or 300 for the entire academic year, and the hourly compensation may not exceed the faculty member's non-teaching hourly rate. *Id.* A faculty member may not receive both reassigned time and extra monetary compensation for performing the same work.

The PSC did not make an opening statement.

Charge I, Specifications 1 and 2

Bermanzohn Direct Testimony

Professor Bermanzohn testified that the Respondent was the Director of the GCWE during all of the years that she served as Chair.¹⁰ She stated that being the Director of the GCWE was not considered to be a multiple position, but, rather, a part of the Respondent's workload for which he received reassigned time from teaching.

⁹ At the College, the Office of the Provost is designated by the President to approve requests for such extra compensation pursuant to the MPP.

¹⁰ Professor Bermanzohn stated that she served as the Acting Chair of the Department in 2004, and in the spring of 2005 was elected to complete the remaining one-year term of the former Chair. Professor Bermanzohn stated that she then served as Chair from 2006 through the spring of 2012.

Gilbert Direct Examination

Vice President Gilbert testified that he has been in his present position since May of 2013; prior thereto he served as the Assistant Vice President for Finance, Budget, and Planning/Comptroller. Vice President Gilbert stated that during the period 2008 to early 2012, he reported to Steven Little, the College's then-Vice President for Finance and Administration.¹¹

Vice President Gilbert testified that a Member Organization Account ("MOA") is a discrete non-tax levy account that houses funds to be used for a particular department's purposes. Vice President Gilbert estimated that more than 100 such accounts have been established at the College, and stated that MOA Account #4730 had been established for the GCWE.

Vice President Gilbert explained that Coll. Ex. 84a reflects payments to the Respondent during the 2010 fiscal year (*i.e.*, July 1, 2009 to June 30, 2010) for "Administrative Support Services" that he claimed to have performed for the GCWE.¹² Vice President Gilbert stated further that the remainder of Coll. Ex. 84a (*i.e.*, pp. 5-36) consists of additional invoices submitted by the Respondent, primarily on a monthly basis, for administrative support services he provided to the GCWE during the 2010 fiscal year, their approvals, evidence of payment, and the Respondent's supporting time sheets. Vice President Gilbert testified that Coll. Exs. 84b and 84c consist of similar documentation for payment requests for GCWE and other funds for the 2011 (*i.e.*, July 1, 2010 to June 30, 2011) and 2012 (*i.e.*, July 1, 2011 to June 30, 2012) fiscal years.

Vice President Gilbert identified copies of Brooklyn College Member Organization Financial Reports for the GCWE's MOA #4730 for the 2010 and 2011 fiscal years, and for a portion of the 2012 fiscal year (Coll. Ex. 23). Looking at the 2010 fiscal year report, he testified that during the fall of 2009 and spring of 2010, the gross amount of GCWE payroll reimbursements -- designated in the report as "GRAD CTR WRK EDUC-NTL PYRL RMB"¹³ -- paid to the Respondent totaled \$86,572.60. Excluding summer payments, this amount comes to \$50,263

¹¹ Vice President Little retired from the College effective July 9, 2012.

¹² As an example of how the Respondent was paid, Vice President Gilbert identified a memorandum from the Respondent to Vice President Little dated July 1, 2009, stating that he had worked 134.5 hours of administrative support services at the GCWE during June 2009 at a rate of \$59.07 per hour, and requesting payment in the amount of \$7,944.92, (Coll. Ex. 84a, p. 4). Vice President Gilbert noted that Vice President Little subsequently sent a memorandum dated July 2, 2009, to Andrew Steketee, the College's then Manager of Fiscal and Business Services, requesting that the GCWE MOA (MOA #4730) pay this invoice (*Id.*, p. 3). Vice President Gilbert also identified a copy of a Member Organization Payment Request for MOA #4730 in the amount of \$9,136.66, which was approved by Sarah Fleming, the College's Coordinator of the Non-Tax Payroll, on July 7, 2009 (*Id.*, p. 1). Vice President Gilbert explained that the \$9,136.66 figure represented the amount that the Respondent had requested (*i.e.*, \$7,944.92), plus an additional 15% of that amount to account for required withholdings and payroll processing charges (*i.e.*, \$1,191.74).

¹³ This means the non-tax levy payroll for the GCWE.

(*id.*, pp. 4-5).¹⁴ Likewise, according to the Financial Report for the 2011 fiscal year (*id.*, pp. 13-18), MOA #4730 made payroll reimbursements to the Respondent during the fall of 2010 in the gross amount of \$21,735 (*id.*, p. 14),¹⁵ and during the spring of 2011 in the gross amount of \$26,386.45 (*id.*, p. 16).¹⁶ Lastly, for the period July 1, 2011, to January 5, 2012, MOA #4730 paid the Respondent the gross amount of \$14,255.85 (*id.*, p. 10).¹⁷

Vice President Gilbert testified that the Brooklyn College Foundation (“BCF”) is a 501(c) (3) charitable organization that was established to accept donations made to the College.¹⁸ Vice President Gilbert pointed out that according to the BCF Project Activity Report for the period January 26, 2010, to December 13, 2011, the Schott Foundation made two grants to the BCF, each in the amount of \$142,000 (on January 26, 2010, and March 9, 2011), and one grant in the amount of \$100,000 on August 10, 2010, for the Urban Community Teachers program (“UCT”).¹⁹ (Coll. Ex. 30, pp. 1-2). He also testified that the Respondent submitted invoices for administrative support services that he performed on behalf of the UCT during 2010, in the amounts of \$5,000 each that were subsequently submitted for payment by the BCF Schott Foundation account (Coll. Exs. 29; 34i; and 34j).²⁰ Vice President Gilbert identified a document that he prepared in late 2011/early 2012 that shows that during the first three quarters of the 2010 calendar year, the BCF made payments to the Respondent from Schott Foundation grant funds

¹⁴ Coll. Ex. 23 lists 13 payments by MOA #4730 to the Respondent beginning on July 8, 2009, and ending on June 30, 2010, in the total amount of \$86,572.60. However, inasmuch as the College has withdrawn Charge 1, Specification 3, which alleged that the Respondent engaged in conduct that resulted in his unjust enrichment each summer during the years 2009 through 2011, the payments made on July 8 and August 19, 2009, as well as on June 9 and 30, 2010 (*i.e.*, \$9,136.66; \$10,868.88; \$5,433.75; and \$10,867.50), have been excluded from consideration.

¹⁵ Reduced by \$8,192, to reflect eight (8) hours of work for ERIS that had been listed and approved on the Respondent’s Multiple Position report signed by Associate Provost Jerrold Mirotznik on October 17, 2010 (Coll. Ex. 32, pp. 15-17), this amount comes to \$13,543. Using sixteen weeks (September 1 to December 24, 2010, as stated on the report), and a non-teaching adjunct rate of \$64/hour, the Respondent could have earned a maximum of \$8,192 in accordance with the MPP (16 weeks x 8 hours/week x \$64/hour).

¹⁶ For the reasons set forth in footnote 14, *supra*, the payments made to the Respondent on August 18, 2010, and June 8, 2011, have been excluded.

¹⁷ Payments to the Respondent on August 4 and August 31, 2011, have been excluded.

¹⁸ Per the College’s website, the Brooklyn College Foundation’s purpose is to encourage and promote the academic purposes of the College, the University and the educational welfare of students, faculty, alumni, and the community.

¹⁹ The UCT is a program designed to recruit young minority males into the teaching profession.

²⁰ Dr. Cheng testified that he has been serving in his current position as Associate Provost for Academic Programs since August 2013, and that it is his understanding that faculty members who participate in BMI/ERIS programs, such as UCT, are not entitled to receive extra compensation for such work.

totaling \$25,000 (which included the \$5,000 invoices noted above) (Coll. Ex. 34c).²¹ In addition, Vice President Gilbert noted that in 2011, an MOA was established for Schott funding. According to the Financial Report for the UCT MOA (MOA #5990) covering the period July 1, 2011, to January 5, 2012 (Coll. Ex. 25), on November 11, 2011, the Respondent received a gross payment from that account in the amount of \$11,227.40 (*id.*, p. 3).

Gilbert Cross Examination

On cross examination, Vice President Gilbert testified that he did not ask the Respondent whether he had received reassigned time for the work he performed at the GCWE. Vice President Gilbert testified further that Vice President Little had the authorization within the Budget and Finance Office to approve the payment requests included in Coll. Exs. 84a, 84b, and 84c.

Vice President Gilbert testified that he was unaware of any audits of the GCWE having been conducted since 2000, and that he was unaware as well of any audits of BMI, ERIS, or the UCT. He testified that all Member Organization Accounts would normally be audited annually.

Vice President Gilbert testified further on cross examination that he did not know whether the Department exercised any control over the Respondent in his running of the GCWE. Vice President Gilbert also stated that there is no procedural manual concerning how the Office of Fiscal and Business Services is supposed to process payment requests. Vice President Gilbert also testified that at some point questions arose regarding the time sheets that the Respondent had submitted; specifically, he stated that he became concerned that the Respondent and other members of the GCWE had been working on multiple projects at the same time. Vice President Gilbert testified that he spoke with Vice President Little, who directed him to process the Respondent's payment requests. Vice President Gilbert testified further that he also raised concerns with the Provost, Dr. William Tramontano.

FINDINGS

Copies of the Respondent's Workload Summary Reports for the Fall 2008, Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011, and Fall 2011 semesters, all of which had been identified by Dean Phillips (Coll. Ex. 1, pp. 1-7), reveal that the Respondent had received reassigned time of either three or six hours in each semester in conjunction with his duties as Director of the GCWE and as the Director of the Diversity Center. The College has established that despite having received reassigned time for performing such duties, the Respondent

²¹ Vice President Gilbert's chart included a payment of \$10,000 in the summer of 2010, which will not be considered herein.

submitted numerous invoices for extra compensation for administrative duties he had performed on behalf of the GCWE and the UCT. This resulted in the Respondent obtaining additional compensation of approximately \$130,000 to which he had not been entitled.²² This charge is sustained.²³

Charge II

Eaton Direct Examination

Mr. Eaton stated that for the past three years he has been the Director of Academic Administration, in the College's Office of the Provost; prior thereto he served as the Special Assistant to the Associate Provost. Mr. Eaton testified that one of his responsibilities is acting as the faculty workload coordinator, which includes, but is not limited to, managing faculty members' reassigned time, administrative processing of multiple position requests, and ensuring that faculty members comply with their contractual workload requirements.

Mr. Eaton testified that the College advises all full-time members of the Instructional Staff that they must submit a Multiple Position Report form every fall and spring semester, as well as during the summer if they perform CUNY-related activity during that period. Mr. Eaton identified the emails that he sent during the Fall 2008, Fall 2009, Spring 2010, Fall 2011, and Spring 2012 semesters, reminding the faculty of the requirement to file a Multiple Position Report form (Coll. Ex. 108, pp. 1-5). Mr. Eaton also noted that a Multiple Position form must be filed even if the faculty member had no additional activities to report, and that it must be approved by the Department Chair and the President or his/her Designee, in this case the Associate Provost, Jerrold Mirotznik.

Mr. Eaton testified further that overload assignments at the College are governed by the University's Statement of Policy on Multiple Positions ("MPP") (Coll. Ex. 107b, pp. 3-5), which had been last revised in April 2011.²⁴ Mr. Eaton pointed out that pursuant to section 2.3 of the MPP, when special funding in support of research is available, a faculty member is not entitled to extra compensation for engaging in such research during the academic year. Mr. Eaton also testified that under section 2.3 of the MPP, under exigent circumstances a faculty member may

²² This figure is derived from payments of \$50,263, \$13,543 (See footnote 15, *supra*), \$26,386.45, \$14,255, \$15,000 and \$11,227, as described herein.

²³ As discussed in Charge XIV, the Respondent also misappropriated ERIS-related funds from a grant from the Office of Children and Family Services.

²⁴ A version of the MPP had been in effect prior to that date. With respect to the provisions at issue herein, there is no substantive difference between the prior MPP and the current version.

be granted permission to work on a non-teaching short-term assignment that constitutes an overload, provided that such an assignment is limited to 150 hours per semester at the faculty member's non-teaching hourly rate.²⁵

Mr. Eaton testified that in the Respondent's Multiple Position Report form for the Fall 2009 semester, the Respondent had listed a non-teaching assignment of four hours per week for 15 weeks (September 9 to December 15, 2009) (Coll. Ex. 32, pp. 13-14). Mr. Eaton also pointed out that Associate Provost Mirotznik had not approved this form. Mr. Eaton noted that pursuant to the 2010 fiscal year Financial Report for GCWE MOA #4730, during the fall of 2009 the Respondent had received compensation for services performed at the GCWE in the amount of \$23,096 (Coll. Ex. 23, pp. 4-5). Assuming *arguendo* that the Respondent was entitled to any extra compensation for this assignment, Mr. Eaton reiterated that under University policy, a non-teaching assignment for extra compensation may not exceed 150 hours per semester;²⁶ the \$23,096 the Respondent received for his services at the GCWE would have corresponded to an assignment of approximately 343 hours, well in excess of the policy limit,²⁷ or, conversely, had he worked the 150 hours, it would have corresponded to an hourly rate of \$153, again well in excess of the policy limit.

Mr. Eaton testified that the Respondent did not submit a Multiple Position Report for the Spring 2010 semester. Upon reviewing the 2010 Fiscal Year Financial Report for GCWE MOA #4730, Mr. Eaton pointed out that the Respondent had received gross payments totaling \$27,172 from that account during that semester (Coll. Ex. 23, p. 5). Mr. Eaton noted that this payment would have exceeded the earnings limitation under the MPP.²⁸

Mr. Eaton testified that in his Multiple Position Report form for the Fall 2010 semester (Coll. Ex. 32, pp. 15-17), the Respondent had listed that he would be working an eight-hour per week non-teaching assignment for ERIS, from September 1 to December 24, 2010 (*Id.*, p. 17); Mr. Eaton stated that at an hourly rate of \$64, this should have resulted in a total payment of approximately

²⁵ On cross examination, Mr. Eaton testified that he was not sure whether the faculty has been advised that only the Associate Provost may approve a Multiple Position Report form. Mr. Eaton explained that if a multiple position request is denied, the form is returned to the applicable Department, and Associate Provost Mirotznik contacts the Chair to discuss the reason(s) for the denial. Mr. Eaton also stated that work within the University that is subject to approval as a multiple position should not be commenced until such approval has been given.

²⁶ Utilizing the \$64/hour non-teaching hourly rate, the maximum compensation the Respondent could have received as a non-teaching adjunct in one semester was \$9,600 (\$64/hour x 150 hours).

²⁷ At \$64/hour, the actual number is 360.87 hours.

²⁸ It is noted that on January 28, 2010, the Respondent also received a payment of \$5,000 from the BCF Schott Foundation UCT account (See Coll. Ex. 30, p. 1, line 2).

\$7,400.²⁹ Upon reviewing the 2011 fiscal year Financial Report for GCWE MOA #4730, Mr. Eaton pointed out that the Respondent had received total payments during the fall of 2010 in the gross amount of \$21,735 (see Coll. Ex. 23, p. 16). Mr. Eaton testified that the total amount of these payments exceeded the earnings limitation under the MPP.

Mr. Eaton testified that the Respondent did not complete a Multiple Position Report form for the Spring 2011 semester. Upon reviewing the 2011 fiscal year Financial Report for GCWE MOA #4730, Mr. Eaton pointed out that during the spring of 2011, the Respondent had received payments in the gross amount of \$26,386.45 (Coll. Ex. 23, p. 16). Mr. Eaton testified further that pursuant to the Member Organization Financial Report for GCWE-Children's Services (*i.e.*, the OCFS grant) (MOA #4729), for the period July 1, 2010, through June 30, 2011 (Coll. Ex. 24), the Respondent had received a payment in the amount of \$5,244.38, on April 15, 2011, and a payment in the amount of \$11,005.81 on May 25, 2011 (*Id.*, p. 3). Mr. Eaton also noted that payments in these amounts would have required an assignment much greater than the 150 hour limitation set forth in the MPP.

Mr. Eaton testified further that in his Multiple Position Report for the Fall 2011 semester, the Respondent had listed that he would be working an eight-hour per week non-teaching assignment for ERIS from September 16, 2011 to May 25, 2012 (Coll. Ex. 32, pp. 19-20); although the Report had been signed electronically by the Department Chair, it had not been signed by Associate Provost Mirotznik. Upon reviewing the Financial Report for GCWE MOA #4730 for the period July 1, 2011, to January 5, 2012, Mr. Eaton pointed out that the Respondent had received a payment in the amount of \$14,255.85 on October 28, 2011 (Coll. Ex. 23, p. 10), which exceeded the earnings limit of the MPP.

Moreover, the Member Organization Financial Report for the UCT's MOA (#5990) for the period July 1, 2011, through January 5, 2012, indicates that the Respondent had received a payment in the amount of \$11,227.40 on November 11, 2011 (Coll. Ex. 25, p. 3). Mr. Eaton stated that this payment also exceeded the limitations set forth in the MPP.

Mr. Eaton testified that the only non-CUNY activity that the Respondent listed on his Spring 2012 Multiple Position Report form is a .25 hour per week assignment at the Taft Institute at Queens College for 20 weeks (January 1, 2012 to May 30, 2012) totaling five hours (Coll. Ex. 32, p. 22). This form had not been approved by Associate Provost Mirotznik. Mr. Eaton noted further that on January 4, 2012, the Taft Institute paid the Respondent the amount of \$2,052.46 (Coll. Ex. 35c).

²⁹ Mr. Eaton apparently based his calculation on a fifteen week assignment. As noted, using sixteen weeks results in a payment of \$8,192 (16 weeks x 8hours/week x \$64/hour). See footnote 15, *supra*.

Bermanzohn Direct Testimony

Professor Bermanzohn testified that while she served as the Department Chair, the Respondent completed Multiple Position Report forms every semester and that the Provost's Office never contacted her with any concerns about the Respondent's filings.³⁰

FINDINGS

The College has established that the Respondent was paid his annual salary of \$116,364.00 and was given reassigned time for various of his administrative assignments. To the extent the Respondent performed services that constituted an overload to his regular assignments, he either failed to submit a Multiple Position Report form, as required, or, in the instances where he did submit a form, he severely underrepresented his hours and/or failed to receive the requisite approval from the Associate Provost. The monetary compensation he received from the GCWE's MOA, the OCFS's MOA, the UCT's MOA and the Taft Institute at Queens College far exceeded the earnings limitation under the MPP. As a result of the Respondent's failure to comply with the requirements of the MPP, he obtained over \$100,000 in compensation to which he was not entitled, as discussed in Charge 1 above. This charge is sustained.

Charge III

Pollack Direct Examination

Ms. Pollack testified that pursuant to the lease agreement between CUNY and 25 Broadway Office Properties, LLC, dated November 28, 2005, the GCWE was to be housed at 25 Broadway (Coll. Ex. 2). Ms. Pollack pointed out that pursuant to section 7.02(a) of the lease, notice to the landlord must be provided prior to subletting (*id.*, p. 16); she testified that CUNY has never given such notice. Ms. Pollack identified a copy of the University's Manual of General Policy (Coll. Ex. 110) and pointed out that pursuant to Policy 1.09 titled "Centers, Institutes, Consortia, and Special Initiatives," these entities (*i.e.*, the GCWE) are specifically prohibited from "...negotiating legal contracts on their own authority. ..."

Dean Phillips had identified a copy of a Letter of Agreement between the GCWE and the Manhattan Institute of Management ("MIM")³¹ dated December 11, 2006, which was signed by

³⁰ The College did not ask Professor Bermanzohn any questions on cross examination regarding this aspect of her testimony.

³¹ The Letter of Agreement defines MIM as "a not-for-profit academic institution recognized by the Board of Education of the State of New York." It is not a constituent unit of CUNY.

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MIM's Director, Jose Ohayon, as well as the Respondent on behalf of the GCWE (Coll. Ex. 3, pp. 1-2). In the third paragraph of the "General Purposes of Understanding" section in the Letter of Agreement between the GCWE and MIM, the parties agreed to "... jointly administer programs and academic classes ..." [at 25 Broadway with the GCWE] "... provid[ing] administrative support services to achieve common educational, recruitment and internship objectives." Ms. Pollack testified that MIM is an international institution with its own students.

Dean Phillips had also identified a Memorandum of Understanding between the GCWE and the ESRA Film School of New York ("ESRA")³² dated April 6, 2011, which was signed by Charlotte Jardat-Katz on behalf of ESRA, and by the Respondent on behalf of the GCWE (*Id.*, p. 3). Ms. Pollack identified copies of monthly schedules from September, October, November, and December 2009, indicating the dates and times that ESRA had used the GCWE's facilities at 25 Broadway (Coll. Ex. 41). Ms. Pollack identified a copy of a GCWE Daily Shift & Staff Report, which is a check-list of daily tasks, and noted that the MIM sign was to be "returned inside MIM at 5PM DAILY" (Coll. Ex. 42); Ms. Pollack pointed out that the GCWE gives courses after 5:00 p.m. Ms. Pollack also identified copies of invoices from the GCWE to ESRA for, *inter alia*, the use of the GCWE's rooms for contract courses (Coll. Ex. 5). Ms. Pollack stated that the GCWE had never been given the authority to enter into a lease arrangement with ESRA.

Pollack Cross Examination

On cross examination, Ms. Pollack testified that the GCWE's relationship with MIM began when the GCWE was located at 99 Hudson Street in Manhattan; she was unsure whether the relationship predated the Respondent's assuming the role of Director of the GCWE. Ms. Pollack testified that the University should have been notified if the GCWE planned to lease space at 25 Broadway to third parties. Ms. Pollack stated that she was unaware whether 25 Broadway Office Properties, LLC knew about the relationship that the GCWE had with either MIM or ESRA.

Leberstein Direct Examination

Professor Leberstein stated that he began teaching at the University as an Adjunct faculty member in 1971, and held a number of faculty and administrative positions before retiring in 2005. He stated that after retiring, he worked at the GCWE on a part-time basis from 2005 to 2013.

Professor Leberstein testified that from 1982 to 2001, he served as the Executive Director of The City College Center for Worker Education ("CWE"). Professor Leberstein testified that The City College administration had urged him to use the space at 99 Hudson Street, where the CWE

³² ESRA is the acronym for Ecole Supérieure de Réalisation Audiovisuelle. It is not a constituent unit of CUNY.

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had been located, to raise revenue. He stated that the CWE was able to do so by entering into agreements with other entities, such as the NAACP, for which the CWE provided paralegal training courses; the Communications Workers of America, for which the CWE provided meeting space; and a group of retired faculty members from the New School for Social Research, who contracted with the CWE to teach courses at 99 Hudson Street. Professor Leberstein stated that he had vetted these revenue raising measures with the University Office of the General Counsel.

Leberstein Cross Examination

On cross examination, Professor Leberstein testified that he was appointed as a Higher Education Officer to serve as the Executive Director of the CWE. He stated that he did not use the additional revenue that he raised for the CWE to supplement his HEO salary.

FINDINGS

The College has presented evidence that the Respondent, without authorization, and in contravention of the lease agreement between CUNY and 25 Broadway Office Properties, LLC, and the University Manual of General Policy, entered into rental agreements on behalf of the GCWE with both ESRA and MIM.³³ As the College's exhibits indicate, pursuant to these agreements both of these non-College affiliated entities were permitted to use the GCWE facilities to hold contract courses and to develop programs for their own benefit. This charge is sustained.

Charge IV, Specification 1

Norz Direct Examination

Mr. Norz testified that he has been employed by CUNY for four years and that one of his duties is to review proposals for new academic degree programs and to liaise between the CUNY colleges and the New York State Department of Education ("NYSDOE").

³³ It is noted that although Professor Leberstein testified that the City College administration had instructed him to maximize the revenue from the space at 99 Hudson Street, he also stated that he vetted proposed transactions with the University Office of the General Counsel. This is a distinctly different scenario from the Respondent's unilateral dealings with ESRA and MIM, whereby he entered into agreements with them to utilize the GCWE's classrooms, conference rooms, auditorium, storage space and support personnel without authorization from either the College or the University.

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Mr. Norz testified that for a new degree program to be implemented at a CUNY college, it must be approved by the college's faculty council and then forwarded to the CUNY Office of Academic Affairs for transmittal to and approval by the CUNY Board of Trustees; final approval must also be obtained from NYSDOE.

Mr. Norz stated that in March 2012, Brooklyn Law School, an independent institution not part of CUNY, had submitted to NYSDOE an application for a joint Juris Doctor/MA in Political Science program between Brooklyn Law School and the College (Coll. Ex. 7). Mr. Norz noted that in the application, the "CUNY Brooklyn College Graduate Center" had been listed as the "partner institution" (*id.*, p. 2), with the Respondent having signed the application as the partner institution's "CEO." Mr. Norz testified that NYSDOE had no knowledge of CUNY having approved this application and that he subsequently contacted the College's Provost's Office and was advised that the application had not gone through the appropriate faculty approval process at the College. Mr. Norz testified that the College and Brooklyn Law School had established a joint Juris Doctor/MA program years ago but that it had been disbanded in 1996, and that a reconstituted program would first have to have been approved by the College's Faculty Council and then submitted to the CUNY Office of Academic Affairs. Mr. Norz testified that he ultimately advised NYSDOE not to act on the application.

Norz Cross Examination

On cross examination, Mr. Norz testified that he could not recall how he knew that the prior joint program between the College and Brooklyn Law School had been closed in 1996.

Pollack Direct Examination

Ms. Pollack identified email threads from November 2010 and April and May 2011 among a second year student at Brooklyn Law School (the "Student"), Ms. Maderie ("Pam") Miller, the then-Academic Advisor and Associate Director of the GCWE, and the Respondent, concerning the Student's enrollment in the College's Masters in Urban Policy program based upon his belief that it was a joint program with Brooklyn Law School (Coll. Ex. 9).³⁴ Dean Phillips had identified a memorandum dated May 2, 2012, from Dr. Paisley Currah, the Chair of the Department of Political Science, to the Graduate Committee on Courses and Standing, in which he recommended that the committee grant the Student's request to apply nine credits that he had earned at Brooklyn Law School as elective credits towards his Urban Policy Master's degree requirements, inasmuch as the student had been misled as to the existence of the joint program (Coll. Ex. 8, p. 1).³⁵

³⁴ The PSC did not ask Ms. Pollack any questions on cross examination regarding this aspect of her testimony.

³⁵ It is noted that the second page of Coll. Ex. 8 is an advertisement, which the College alleged the Respondent had prepared to publicize the joint program.

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Bermanzohn Direct Testimony

Professor Bermanzohn testified that she was familiar with a joint Juris Doctor /MA program between the College and Brooklyn Law School, whereby students in the program could take courses at either institution and receive dual credit. Professor Bermanzohn testified that this program existed prior to her becoming Chair and that to her knowledge, it was never discontinued. She stated that she would receive reports each semester regarding students who were enrolled in the program.

Bermanzohn Cross Examination

On cross examination, Professor Bermanzohn testified that she was unaware that the Respondent had signed the application submitted to NYSDOE for the program. She testified that there were between four and six students in the program. Professor Bermanzohn testified further that she never checked whether the students were actually taking classes at Brooklyn Law School. Professor Bermanzohn also stated that she was aware of one female student who had graduated from the program; although she could not recall exactly when this occurred, she stated that it had to have been sometime after 2000. She acknowledged that she did not check to see whether the student took any courses at Brooklyn Law School and/or whether Brooklyn College gave the student credit for such courses, if any.

Charge IV, Specification 3

Conelli Direct Examination

Dean Conelli stated that she has been in her present position (as Dean of the College's School of Visual, Media & Performing Arts) since August 2011. She testified that the College has undergraduate programs in film production and film history and that in 2009 the College began the process of obtaining the necessary approvals for graduate and Master's programs in film that would focus on directing, screenwriting, and pre- and post-production work. The Dean testified further that if another department within the College wanted to set up a film program, there would need to be consultation between the departments and with her office.

Dean Conelli identified a copy of a document titled "Memorandum of Understanding between the Graduate Center for Worker Education and ESRA Film School of New York" dated April 6, 2011, which was signed by the Respondent on behalf of the GCWE and by Charlotte Jardat-Katz on behalf of ESRA (Coll. Ex. 4).³⁶ In this agreement, the GCWE and ESRA agreed to cooperate on film certificate programs to be "serviced and housed" at the GCWE; specifically, the GCWE

³⁶ As previously set forth in Charge III, Ms. Pollack testified as to the relationship between the GCWE and ESRA, and her testimony is deemed to be subsumed herein.

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committed to providing “administrative staff services, security, reception, technical support, logistical and scheduling support, cleaning services and consulting services with regards to programmatic offerings and certification pending completing of approved curriculum.” Dean Conelli stated that she had no knowledge of this film program and was never asked to review this agreement before its execution. Dean Conelli stated that she was concerned with the agreement between the GCWE and ESRA because it appeared that the film program had not gone through the normal approval process (e.g., the faculty council) and had been established without her involvement. Lastly, the Dean reviewed a chart of courses that had been offered by MIM-ESRA during the period September to December 2009 at the GCWE (Coll. Ex. 44).

Conelli Cross Examination

On cross examination, Dean Conelli stated that she did not know what the College’s policy on continuing education had been prior to her joining the College. She stated that she did not know who had created Coll. Ex. 44 and that she saw this document for the first time after the charges had been preferred. Dean Conelli testified that she does not know whether the program referenced in Coll. Ex. 44 is a College program.

FINDINGS

The College has established that an application in which the Respondent represented himself as the “CEO” of the College’s “Graduate Center” was submitted to NYSDOE in support of the creation of a joint Juris Doctor/MA program with Brooklyn Law School. The College’s witnesses testified credibly that this proposed program had not been vetted through the prescribed approval process at either the College or University level, and that the Respondent had no authority to sign the application.³⁷ The College also established that the Respondent had promoted the program even though NYSDOE had not given its approval, and that the College had made an accommodation to at least one individual who had enrolled in the College’s Masters in Urban Policy Program under the mistaken impression that this was a viable joint program with Brooklyn Law School.

The College has also established that the Respondent entered into an arrangement with ESRA for the development of film certificate programs at the same time that the College was developing its own Master’s program in film. Dean Conelli credibly testified that the Respondent had entered

³⁷ The Chancellor’s Designee acknowledges that Professor Bermanzohn testified that she believed that a joint program, continued in existence throughout her tenure as Chair, despite the testimony of the College’s witness that it had expired in 1996. Professor Bermanzohn’s recollection of the program was hazy, and she admitted that she never checked whether students who were allegedly enrolled in the program actually took classes at Brooklyn Law School. More to the point, there would have been no need for an application to have been submitted to NYSDOE if, in fact, the program had continued without interruption.

into the Memorandum of Understanding with ESRA without consulting the appropriate department head or going through the appropriate approval process. Charge IV, Specifications 1 and 3 are sustained.

Charge V

Galang Direct Examination

Ms. Galang stated that she has held the position of Director of the College's Office of Fiscal and Business Affairs since February 2012; prior to that she served for five years as a Manager in the College's Accounts Payable Office and as a College Accountant in the Deputy Comptroller's Office.

On April 19, 2010, the Respondent travelled to Egypt and then to Greece, returning to New York on April 30, 2010. The purpose of this trip was to conduct fieldwork with students taking his graduate course. Ms. Galang identified a copy of a payment request dated April 12, 2010, to the GCWE's account (MOA #4730) on behalf of the Respondent in the amount of \$3,045 (Coll. Ex. 12, p. 1), for this trip (*id.*, p. 3). She explained further that this amount, which was paid on April 13, 2010 (*id.*, p. 4), represented five days of per diem expenses of \$267 per day for the Egypt portion of the trip (\$1,335) and five days of per diem expenses at \$342 per day for the Greece portion of the trip (\$1,710) (Coll. Ex. 12. p. 2).

Galang Cross Examination

On cross examination, Ms. Galang testified further that she could not tell who had authorized the payment. She stated that a per diem payment is intended to cover lodging and/or meals on approved travel but not airfare.

Pollack Direct Testimony

Ms. Pollack identified copies of a Travel Expense Voucher and Request for Payment dated July 14, 2010, in the amount of \$945.00³⁸ that the Respondent had submitted to the Research Foundation³⁹ for reimbursement of his meal expenses during his trip to Cairo, Egypt and Athens, Greece (seven days at the per diem rate of \$135) (April 23 to 30, 2010) (Coll. Ex. 15, p. 2) and a print-out indicating that this amount had been paid by the Research Foundation on August 12,

³⁸ It appears that the Respondent's original reimbursement request was for \$2,317.00, which was reduced to \$945 by Research Foundation personnel when the request was processed.

³⁹ Per its website, the Research Foundation of The City University of New York "is a not-for-profit educational corporation that manages private and government sponsored programs at The City University of New York."

2010 (*id.*, p. 1). Ms. Pollack testified that the Research Foundation is completely separate from the Member Organization Accounts at the College.⁴⁰

Hainline Direct Testimony

Professor Hainline stated that she has taught at the College since 1972 and served as the Dean of Research and Graduate Studies from 1995-1998 and 2000-2011. Professor Hainline testified that the University provides funding to the colleges to reimburse faculty members for their travel expenses associated with their attendance at professional meetings and conferences. Professor Hainline stated that when she served as Dean, she was responsible for allocating travel funds at the College. She stated that New York State requires that travel requests must be approved prior to the trip for which the funds are requested. She stated that a faculty member seeking travel reimbursement must complete an application indicating the reason for the reimbursement request. Professor Hainline identified a copy of the College's procedures for applying for travel reimbursement that were in effect during the 2007-2008 academic year (Coll. Ex. 13a).⁴¹

Professor Hainline identified a copy of a travel request form dated April 5, 2010, that the Respondent had submitted to her office, in which he requested \$1,500, for airfare/train transportation expenses to attend a conference in Athens, Greece from April 28-30, 2010, titled "What is Shaping the Global Agenda?" (Coll. Ex. 13). She noted that in the "Purpose" section of this form, the Grievant had checked the option "Attending but not presenting." Professor Hainline also identified a copy of a second travel request form that the Grievant had submitted to her office on May 13, 2010, in which he also sought reimbursement in the amount of \$1,500 for airfare/train transportation expenses to attend a conference in Egypt/Greece from April 19-30, 2010, titled "The Economist." (Coll. Ex. 13d). Professor Hainline noted that in the "Purpose" section of this form, the Grievant had checked the option "Presenting Paper/Poster/Lecture," which was a different purpose than what he had checked on the earlier form. Professor Hainline testified that she did not believe that the College had approved either of the request forms.

Charge VI

Galang Direct Testimony

On March 22, 2011, the Respondent travelled to Brazil, returning to New York on March 31, 2011. The purpose of the trip was to conduct fieldwork with students taking his graduate course.

⁴⁰ The PSC did not ask Ms. Pollack any questions on cross examination regarding this aspect of her testimony.

⁴¹ Professor Hainline stated that these procedures remained in effect during the time that she served as Dean. It is noted that pursuant to these procedures, "...[p]riority is given to members of the instructional staff who are presenting papers at conferences or meetings. ..."

Ms. Galang identified a copy of a payment request dated March 16, 2011, to the GCWE's account (MOA # 4730) signed by the Respondent and Dr. Bermanzohn, in her role as Chair of the Department, in which the Respondent was approved for an advance for his hotel, meals, and incidental expenses in the amount of \$3,287, for this trip (Coll. Ex. 17).⁴²

Hainline Direct Testimony

Professor Hainline identified a copy of a travel request signed by the Respondent on March 9, 2011, and by then-Chair Bermanzohn on March 15, 2011, that the Respondent had submitted to her office, requesting travel funds in the amount of \$1,440, for attendance at a conference titled "Univ. San Salvador/745G: Course" from March 21-31, 2011, in Brazil, where he was scheduled to deliver a lecture titled "Bi-lateral Urban Policy." (Coll. Ex. 17, p. 13). She also identified an email dated March 16, 2011, from Tamara Harris, an Administrative Assistant in the Office of the School of Natural and Behavioral Sciences, who had advised the Respondent that in order for his travel request to be processed, he needed to present either his letter of invitation or acceptance letter (Coll. Ex. 17, p. 12); in response, the Respondent forwarded Ms. Harris a copy of the course syllabus for "7450G-Fieldwork: Brazil" (Coll. Ex. 17, pp. 14-15). After Ms. Harris reiterated her request on March 17, 2011, the Respondent sent her an email later that day in which he acknowledged that there was no letter of acceptance, and setting forth his opinion that "... I think any academic justification should work ..." (*id.*, p. 11). In response to this email, Dean Hainline sent the Respondent an email, also on March 17th, in which she wrote as follows: "This is a class you are giving that students are paying tuition for. In that case, this is not the right source of funding, as it's not a conference. This is not for faculty travel to teach courses outside of the US." (*id.*)⁴³

Charge VII

Galang Direct Testimony

Ms. Galang identified a copy of a Payment Request to the GCWE's account (MOA #4730) submitted by the Respondent on April 9, 2009, for travel reimbursement expenses in the amount of \$1,578.71, associated with his course trip to Venezuela from March 6 to 14, 2009 (Coll. Ex. 19, p. 1). Ms. Galang pointed out that this request represented the difference between an

⁴² On cross examination, Ms. Galang stated that she did not see anything improper on its face with regard to the Respondent's request for a travel advance for his trip to Brazil.

⁴³The PSC did not ask Dean Hainline any questions on cross examination regarding this aspect of her testimony.

advance in the amount of \$3,500 that the Respondent had previously received and his total claimed expenses of \$5,078.71 (*id.*, p. 2).

Galang Cross Examination

On cross examination, Ms. Galang testified that she did not see anything improper with regard to the Respondent's request for reimbursement for those expenses incurred on his trip to Venezuela that exceeded the advance (Coll. Ex. 19); Ms. Galang stated that she was unaware that the Respondent had not provided the requested documentation to process this request.

Hainline Direct Testimony

Professor Hainline identified a copy of letter dated March 4, 2009, that she sent to the Respondent advising him that he had been approved for \$500 in travel funds to help defray the costs of his estimated travel expenses to Caracas, Venezuela for a trip from March 9-13, 2009 (Coll. Ex. 20).⁴⁴

Pollack Direct Testimony

Ms. Pollack identified copies of a Travel Expense Voucher and Request for Payment dated April 3, 2009, in the amount of \$824 that the Respondent had submitted to the Research Foundation for reimbursement of his meal expenses during his trip to Caracas, Venezuela (eight days at the per diem rate of \$103) for travel March 6-14, 2009, and a print-out indicating that this amount had been paid by the Foundation on April 8, 2009 (Coll. Ex. 22, pp. 1 and 2).⁴⁵

Charge VIII

Galang Direct Testimony

On March 4, 2008, the Respondent travelled to Cuba, returning on March 11, 2008. The purpose of this trip was to conduct fieldwork with students taking his graduate course. Ms. Galang identified the following: a copy of a payment request to the GCWE's account (MOA #4730) submitted by the Respondent on July 9, 2008, in the amount of \$574, representing seven days of per diem expenses associated with his trip to Cuba for an academic conference from March 4 to

⁴⁴ It is noted that in his travel request dated February 18, 2009, which was attached to Dean Hainline's letter, the Respondent had requested \$3000, and had stated that he would be giving a lecture in Caracas, Venezuela titled "Urban Policy Under the Obama Administration."

⁴⁵ The PSC did not ask Ms. Pollack any questions on cross examination regarding this aspect of her testimony.

11, 2008 (Coll. Ex. 33c, p. 1)⁴⁶; a copy of a payment request signed by the Respondent and submitted to MOA #4730 on July 8, 2008, in the amount of \$669, representing reimbursement of a credit card down payment that he had made to Marazul Charters, Inc. ("Marazul"), on February 11, 2008, for expenses associated with this trip (Coll. Ex. 33d); a payment request signed by the Respondent and dated February 25, 2007,⁴⁷ in the amount of \$1,639, representing the balance owed to Marazul (Coll. Ex. 33g, pp. 1-2)⁴⁸; and a copy of an undated payment request that the Respondent submitted to MOA #4730 in the amount of \$244.00, representing expenses incurred for round trip airfare from New York to Miami, Florida on March 3 and 11, 2008 (Coll. Ex. 33g, p. 3). Ms. Galang further identified a payment request signed by the Respondent and submitted to MOA #4730 on May 30, 2008, in the amount of \$357.53, requesting reimbursement for a May 3, 2008 purchase of supplies at a Staples store (Coll. Ex. 33i). Ms. Galang noted that aside from the February 27, 2008 payment to Marazul, all of the Respondent's other requests, totaling \$1,844.53 (\$574 + \$669 + \$244 + \$357.53), were paid to him by check dated July 15, 2008 (Coll. Ex. 33c, p. 4).

Galang Cross Examination

Ms. Galang stated that she did not see anything improper on its face with regard to the Respondent's payment request of February 25, 2008, in the amount of \$1,639 (Coll. Ex. 33g), or with his request in the amount of \$244 which, she noted, had been approved by Ms. Fleming. Ms. Galang explained that a Member Organization may reimburse an individual for authorized purchases of supplies, and that she also did not see anything improper on the face of Coll. Ex. 33i. Ms. Galang also acknowledged that the Respondent's payment request for \$669 had also been approved by Ms. Fleming.

Pollack Direct Examination

Ms. Pollack identified a copy of a Travel Expense Voucher and Request for Payment dated June 23, 2008, in the amount of \$1,014.56 that the Respondent had submitted to the Research Foundation for reimbursement of his travel, lodging, and meal expenses incurred on his trip to

⁴⁶ As the Respondent wrote in a memorandum dated July 9, 2008, accompanying the request, "this payment will partially cover numerous non-reimbursed expenses for which no receipts were issued." (Coll. Ex. 33c, p. 2).

⁴⁷ It is noted that that this form indicates that it was submitted on February 25, 2007. However, inasmuch as the request had been approved on February 26, 2008, the College explained that the reference to 2007 was probably a mistake; the Respondent's counsel did not object to this assumption.

⁴⁸ Per the invoice from Marazul (Coll. Ex. 33g, p. 2), these expenses consisted of round trip airfare from Miami to Havana, a Cuba visa processing fee, and hotel accommodations. MOA #4730 paid this amount directly to Marazul by check dated February 27, 2008.

Havana, Cuba from March 3 to 11, 2008 (Coll. Ex. 33f); the bottom of this form indicates that the Foundation paid this voucher on July 1, 2008.⁴⁹

Hainline Direct Examination

Professor Hainline identified a copy of an approved travel voucher in the amount of \$400 that the Respondent had submitted to her office on April 9, 2008, for airfare to attend an educational conference in Havana, Cuba held from March 3 to 11, 2008 (Coll. Ex. 33e).⁵⁰

FINDINGS (Charges V-VIII)

The College has established that the Respondent applied for and received reimbursement from multiple sources for the costs associated with his trips to Egypt and Greece, Brazil, Venezuela, and Cuba. Regarding the class trip to Egypt and Greece in April 2010, the documentation submitted by the College reveals that despite having received \$3,045 from the GCWE's account (MOA #4730) prior to his departure to cover his travel expenses, including per diem expenses in both countries, in July 2010 the Respondent also applied for and was reimbursed by the Research Foundation in the amount of \$945, representing seven days of per diem expenses for the Greece portion of the trip. Moreover, one month after his April 5, 2010 application to the College's travel fund for payment of his airfare associated with this very same trip had been denied, the Respondent submitted a second application to Dean Hainline's office in which he changed the purpose of his trip, presumably to increase the chances of its approval.

The College also established that despite having received \$3,287 from the GCWE's account (MOA #4730) for travel to Brazil in March 2011, the Respondent also applied, albeit unsuccessfully, to the College's travel fund for reimbursement of his per diem expenses for the same trip to Brazil. Regarding the trip to Venezuela in March 2009, the documentation reveals that after the Respondent had received an advance of \$3,500, and a subsequent payment of \$1,578.71 from the GCWE's account (MOA #4730) representing the difference between the advance and his actual expenses, including meals and airfare, the Respondent applied for and received an additional \$824 from the Research Foundation for per diem expenses, and \$500 from the College's travel fund through Dean Hainline's office. Lastly, the documentation reveals that despite being reimbursed by MOA #4730 for his expenses associated with his trip to Cuba in March 2008, the Respondent also applied for and received \$1,014.56 from the Research Foundation and \$400 from the College's travel fund for the same trip.

Charges V-VIII are sustained.

⁴⁹ The PSC did not ask Ms. Pollack any questions on cross examination regarding this aspect of her testimony.

⁵⁰ The PSC did not ask Dean Hainline any questions on cross examination regarding this aspect of her testimony.

Charge XII

Pollack Direct Examination

Ms. Pollack identified copies of an invoice dated September 26, 2011, from the Taft Institute at Queens College to ESRA in the amount of \$6,000 for “Academic & Curriculum Services for Fall 2011 semester,” and ESRA’s September 27, 2011 check payable to the Institute (Coll. Exs. 35a and b). Ms. Pollack stated that the Taft Institute has no affiliation with Brooklyn College.⁵¹ Dean Phillips had identified a copy of a check from the “Taft Institute Green Unions” to the Respondent dated January 4, 2012, in the amount of \$2,052.46 (Coll. Ex. 35c).⁵²

FINDINGS

In his Multiple Position Report form for the Spring 2012 semester, the Respondent represented that he would be devoting five hours during that semester (.25 hours/week for 20 weeks) to providing grant assistance to the Taft Institute (Coll. Ex. 32, p. 22). This form had not been approved by the Associate Provost, and therefore the Respondent should not have performed any services for the Taft Institute. Moreover, even if the form had been approved, using a non-teaching hourly rate of \$64, the Respondent would have been entitled to gross compensation of \$320, yet the documentation presented by the College reveals that he received a much greater amount (*i.e.*, \$2,052.46), in violation of the MPP. This charge is sustained.

Charge XIII

Gilbert Direct Testimony

Vice President Gilbert testified that Ms. Anjanie (“Annie”) London served as a College Office Assistant in the GCWE from April 2006 through March 2012,⁵³ and that her salary during the period from 2008 to early 2012 was in the mid-\$30,000 range.⁵⁴ Vice President Gilbert testified

⁵¹ The PSC did not ask Ms. Pollack any questions on cross examination regarding this aspect of her testimony.

⁵² The “memo” line on the check reads “memo: Holiday Event & Staff Fee.”

⁵³ Ms. London began in the GCWE as a CUNY Office Assistant (“COA”) Level I in April 2006, moved within title to a COA Level 2 in April 2007, and moved within title to a COA Level 3 in April 2011. In 2012, she was transferred to the Department of Economics.

⁵⁴ According to Ms. London’s personnel records, Ms. London’s salary was \$26,790 in April 2006, and was \$33,036 in June of 2012 (See Coll. Ex. 95, pp. 1-3).

further that it was his understanding that a University-wide ban on discretionary overtime existed in 2010 and that if a College program needed additional support, it was supposed to hire more staff members. He (and Michael Hewitt, as discussed below) identified a number of documents and memoranda prepared by either the Respondent or Professor Noel Anderson⁵⁵, requesting that Ms. London be appointed to the College's non tax-levy payroll (Coll. Exs. 50-56), with the costs associated with such appointments to be charged to MOAs for RBA ("Results Based Analysis"), OCFS, or the ERIS/UCT/Schott Foundation, or GCWE (Coll. Exs. 50, 52-55, and 58-79). These payments to Ms. London, from all sources, typically totaled at least \$10,000 per semester.

Gilbert Cross Examination

On cross examination, Vice President Gilbert testified that he was unfamiliar with Ms. London's duties during the years 2010-2012. Vice President Gilbert testified further that he did not know whether Ms. London ever put in for overtime as a College Office Assistant. He stated that he did not know whether Ms. London did any work for the UCT, but stated that he was aware that she was paid for invoices submitted on her behalf that reflected such work. Vice President Gilbert also explained that the work that Ms. London performed for the UCT probably fell within her duties as a COA but that he never looked into whether this was the case. Vice President Gilbert stated that he was unaware of any issues being raised with regard to Ms. London's appointments as reflected in Coll. Exs. 50-56.

Hewitt Direct Testimony

Mr. Hewitt testified that the College's Office of Human Resources was unaware of the additional appointment requests for Ms. London that the Respondent and Professor Anderson had submitted to the Office of Fiscal & Business Affairs. Mr. Hewitt identified copies of College nontax-levy operating account timesheets that Ms. London completed in 2011 (Coll. Ex. 81). He explained that Ms. London's regular work schedule at that time was 9:00 a.m. to 5:00 p.m., Monday to Friday. Mr. Hewitt pointed out that Ms. London billed time to these non tax-levy accounts during hours when she should have been performing those duties for which she is paid from tax-levy funds (*i.e.*, her regular job). Mr. Hewitt also noted that Ms. London had billed for work that fell outside of her regular hours; as an example he cited her timesheet for the period March 14 to 27, 2011 (*Id.*, p. 2), which has six entries for work performed from 8:30 p.m. to 10:00 p.m., and two entries for work performed between 5:00 p.m. and 8:00 p.m. Mr. Hewitt also testified that he was concerned that the GCWE could be seen as having tried to circumvent the University's rules limiting the payment of overtime.

⁵⁵ Professor Anderson served as an Assistant Professor in the Department from September 1, 2002, until August 25, 2012, when he resigned from the College.

Hewitt Cross Examination

On cross examination, Mr. Hewitt testified that he was unaware whether Ms. London had an informal arrangement to work at times other than her regularly scheduled hours of 9:00 a.m. to 5:00 p.m. Mr. Hewitt stated that he did not know whether Ms. London was in fact paid for the hours set forth on the timesheets he identified as Coll. Ex. 81.

FINDINGS

The College has established that the Respondent, without authorization, effectuated Ms. London's appointment to the College's non tax-levy payroll, thereby permitting her to supplement her compensation despite the fact that the services she performed pursuant to these assignments fell within her duties as a College Office Assistant. The College has also established that to the extent that Ms. London purportedly performed some of these services outside of her regularly scheduled work hours, such work violated the University's moratorium on overtime pay. This charge is sustained.

Charge XIV

Direct Testimony

Vice President Gilbert identified a contract between the BCF and the OCFS executed in 2010, and pursuant to which the BCF received a grant in the amount of \$75,000 from OCFS to support ERIS programs (Coll. Ex. 85). Vice President Gilbert pointed out that page 22 of this contract sets forth the names of the three employees -- the Respondent, Professor Anderson, and Professor George Cunningham -- who would be working on the grant, their College salaries, and the percentage of time each would devote to administering the grant; 33% in the Respondent's case. Vice President Gilbert testified that the grant provided funding to reimburse the College for the respective proportion of the salaries of each the people who would be administering the grant. Vice President Gilbert identified a copy of the fiscal year 2011 Financial Report for the OCFS's account (MOA #4729) (Coll. Ex. 24), which indicates that during the spring of 2011, the Respondent received two payments from this account -- one on April 15 and the other on May 25, 2011 -- which together totaled the gross amount of \$16,250.19 (*id.*, p. 3).

Gilbert Cross Examination

On cross examination, Vice President Gilbert testified that if the Respondent had received reassigned time to work on the OCFS grant, the amount of such time should have been seven hours for the year.

FINDINGS

According to the Respondent's Workload Summary Report for the Spring 2011 semester, the Respondent received three hours of reassigned time for his work for the Diversity Center and an additional three hours of reassigned time for his work for the GCWE (Coll. Ex. 1, p. 6). If the reassigned time that the Respondent already had was not sufficient to cover his work on the OCFS grant, he should have approached his Chair to discuss the need for more reassigned time. Moreover, even if payment pursuant to the MPP were available for this type of work, the Respondent failed to submit a multiple position form requesting extra compensation for his work on the grant (and the payments he received far exceeded the maximum amount permitted under the MPP). The fact remains that the Respondent was not entitled to be paid from the grant funds, and the two payments to him totaling over \$16,000 were improper. This charge is sustained.

Charge XVI

Pollack Direct Examination

Ms. Pollack testified that the Grievant sat on the University Committee on Research Awards and that pursuant to that Committee's guidelines as then in effect (Coll. Ex. 111), committee members were not eligible to apply for PSC-CUNY Research Awards but, in return for their service on the committee, were eligible to receive an annual "in-service research allotment ... to conduct their own research while serving on the committee," namely, \$2,000 per year for three years.⁵⁶ During her testimony, Dean Phillips had identified a copy of a payment request dated October 17, 2007, that the Respondent had completed and submitted to the Research Foundation in the total amount of \$339.74 for reimbursement of book purchases, including payments made to The Putney School in Putney, Vermont (Coll. Ex. 37). Dean Phillips had also identified a copy of a payment request dated October 30, 2009, that the Respondent had completed and submitted to the Research Foundation, for reimbursement of purchases of books from the Marlboro College Bookstore in the amount of \$295.61,⁵⁷ and for purchases at Best Buy on

⁵⁶ The Guidelines were substantially modified starting with the 2010-11 academic year -- the first year of a three-year pilot program revamping the PSC-CUNY Research Awards program. Final Guidelines were promulgated in February 2014. The in-service research allotments were eliminated as of the first year of the pilot program and were replaced by a fixed, annual stipend. At the time of their existence, the Guidelines provided that the research allotments could be "used for anything allowable under the current PSC-CUNY Research Awards Guidelines except summer salary." (Coll. Ex. 111, p. 4.)

⁵⁷ It is noted that in an email dated April 9, 2009, from the Respondent to his daughter, with the subject line "bookstore purchases/registration fee etc." the Respondent wrote as follows: "You must keep receipts for each book you purchase or I will not get reimbursed. The statement/printout that you got from the bookstore doesn't work for me. Ask the lady at the book store if you can return the books, repurchase same book and get a receipt. That will save me hundreds of dollars." (Coll. Ex. 38, p. 1).

September 3 and 17, 2009, in the amount of \$470.38, for a total of \$765.99; the invoice was approved on November 25, 2009 (Coll. Ex. 36).

Ms. Pollack also identified a copy of a payment request from the Respondent to the Research Foundation in the amount of \$917.55, representing his purchase of, *inter alia*, a flat screen television from J&R Music World on December 24, 2008 (Coll. Ex. 40, pp.2-3); the Respondent was paid this amount on February 11, 2009 (*Id.*, p. 1).

Ms. Pollack testified further that in an email dated January 14, 2010, Ms. Margie Louie, an Assistant Program Administrator at the Research Foundation, advised the Respondent that the Research Foundation was unable to process his payment request in the amount of \$309.84 because it included the purchase of an Apple IPOD in the amount of \$179.00, and the CUNY-PSC Awards do not support the purchase of such items (Coll. Ex. 91, p. 2). Ms. Pollack noted further that in an email dated January 17, 2010, the Respondent directed Ms. London to order a Mac Book for Professor Anderson, a Dell laptop for a new GCWE employee, and two “kiddles” [*sic*] from Amazon, and advised her that he “...may want the new Apple I-touch.” The Respondent also told Ms. London that “[f]unding is from BC Foundation/Deutsche bank grant.” (*Id.*, p. 1). Ms. Pollack testified, however, that the purpose of this grant was to support the UCT. In an email later that day to Ms. London, with a copy to the Respondent, Professor Anderson advised her to, *inter alia*, “substitute one Kindle with another Ipod touch.” (*Id.*).

Pollack Cross Examination

Ms. Pollack testified further that she never asked the Respondent where the television that he had purchased from J&R was, and is unsure whether anyone else made this inquiry. She stated that the Respondent did not produce the television for tagging and cataloging by the College’s Office of Property Management, as he had been directed to do. Ms. Pollack also testified that the Grievant did not work at any other locations other than 25 Broadway or the Political Science Department at the College during his years at the College.

Chase Direct Examination

Ms. Chase identified a copy of an email dated January 23, 2009, from Ms. Louie to the Respondent, requesting that he describe the purpose of the television that he had purchased (Coll. Ex. 40, pp. 10-11); in his email reply of later that day, the Respondent stated that “[i]t is a multi-purpose LCD used for broadcast productions, editing for broadcast and multimedia production/webcasting and documentary production.” (*Id.*, p. 10). In an email to the Respondent dated February 18, 2009, Ms. Louie wrote as follows: “Please note that you purchased the LCD TV from J&R with CUNY funds, the LCD TV belongs to CUNY. If you have not already done so, please provide the LDC TV to the Property Management Team (contact Jules Levin) at Brooklyn College for tagging and cataloging.” (*Id.*, p. 13). Ms. Chase

testified that the television was not found at the College or at the GCWE's space at 25 Broadway during a property audit that her unit conducted at that site in February 2012.

Chase Cross Examination

On cross examination, Ms. Chase testified that she went to the GCWE only once for an inventory, in February 2012; she stated that she did so at Ms. Pollack's direction. Ms. Chase testified that Internal Audit would not tag an item that was purchased by an individual for their own use. Ms. Chase testified that if a piece of property is purchased with grant funds, it is considered to be CUNY property and should be tagged. Ms. Chase testified further that during the February 2012 audit, her office could not find certain laptop computers, iPads and one MacBook computer. Ms. Chase stated that she informed a number of individuals about this development, including the individual responsible for information technology issues at the GCWE, who subsequently told her that he had been able to locate some, but not all, of the unaccounted for items.

FINDINGS

The College has established that the Respondent submitted invoices to the Research Foundation and was reimbursed for items that were wholly unrelated to his professional work, such as books for his daughter and a flat screen television that was not located at the Department or on the premises of the GCWE and that was purchased on Christmas Eve and carried out of the store, rather than delivered to the College (Coll. Ex. 4).⁵⁸ Moreover, the evidence revealed that after being advised that CUNY-PSC Research Awards could not be used to purchase an iPod, the Respondent directed that Ms. London purchase two such items using BCF Deutsche Bank funds that had been designated for the UCT program. This charge is sustained.

III. DECISION

As a tenured full Professor, the Respondent, holds among the highest of faculty ranks. The College expects all of its faculty, especially those in positions of authority, to comport themselves with integrity and to adhere to College and University policies. The testimony and documents introduced at this hearing establish that the Respondent engaged in a pattern of behavior that evidenced a complete lack of integrity and an ongoing disregard for University protocols and procedures. Over a period of years, the Respondent misused his position as the Director of the GCWE and other of his positions to receive reimbursement for improper

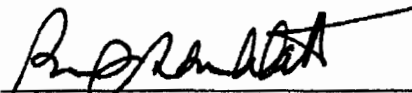
⁵⁸ Subsequent to the hearing, the College advised the Hearing Officer that the Respondent had delivered the television to College personnel on October 1, 2014.

expenses and extra compensation for duties that were covered by his regular salary. As a result of the Respondent's manipulation and deceit, he was able to secure over \$100,000 of payments to which he was not entitled.

The Respondent repeatedly ignored or violated University policies and rules and, in so doing, breached the duty of loyalty and honesty that he owed to the College and to the University. The seriousness, breadth, and repeated nature of the Respondent's misconduct warrant the termination of his employment.

The College's decision to terminate the Respondent's employment is, accordingly, sustained.

10/23/14
Date



Pamela S. Silverblatt
Vice Chancellor for Labor Relations
Designee of the Chancellor